

*In the Matter of Susan Akers, et al., Education Program Development  
Specialist 1, Department of Education*  
DOP Docket No. 2003-2198  
**(Commissioner of Personnel, decided July 15, 2004)**

Susan Akers, Robin Anderson, Gregory Cooper, Patricia DeMarco, Kesha Drakeford, Janice Gabbidon, Thomas Gambino, Eleanor Jaick, Ray Levy, Tisha McKenzie, Carlos Rodriguez, and Francine Wright, represented by Karen Jarrett, Staff Representative, Local 1037, Communications Workers of America (CWA), appeal the attached decision of the Division of Human Resource Management which determined that their effective date of reclassification of their positions from the title Education Program Development Specialist 2 to Education Program Development Specialist 1 is September 21, 2002.

The record in this case evidences that the appellants filed a grievance in June 2001 alleging that certain individuals were selected for “upgrades” even though appellants allegedly performed the same essential duties. As part of the grievance, appellants requested reclassification to the Education Program Development Specialist 1 title. In late June 2001, the grievance was denied at the second step of the grievance process. R. Steven Blaustein, then Director of Administration, Department of Education (DOE), noted in his June 27, 2001 memorandum that “issues of out-of-title work are outside the scope of grievability and may be appealed directly to the Department of Personnel (DOP).” Subsequently, appellants sought reclassification of their positions as Education Program Development Specialist 2 sometime in September 2001. In an e-mail dated September 5, 2001 from Patricia Mitchell, Manager 1, Education to Eleanor Jaick, Shop Steward and one of the named appellants, Ms. Mitchell confirmed meeting with Ms. Jaick regarding Position Classification Questionnaires (PCQ’s) and acknowledged that the forms were submitted to her on that date. Ms. Mitchell noted that she asked Ms. Jaick to hold on to the forms until she determined if she was the person who should receive the forms, the procedures, and if other parties in the DOE should be copied with the forms. Mr. Blaustein informed Ms. Mitchell by e-mail on September 6, 2001 that Maria Nuccetelli, County Superintendent, should receive the requests for reclassification. In response to an inquiry from Ms. Jaick, on October 19, 2001, Ms. Nuccetelli informed Ms. Jaick that the reclassification requests were still under review.

Appellants provide on appeal a letter to the DOP dated May 6, 2002. In this correspondence, the CWA stated that PCQ’s were submitted to the appointing authority on September 5, 2001 and that the union was informed on April 26, 2002 that management was not going to honor the request for reclassification. Appellants also provide a May 29, 2002 letter to Gordon MacInnes, Assistant Commissioner, Division of Abbott Implementation, noting that they have relayed their concerns regarding their job duties and responsibilities with both the previous and current department administrations. At this point, the record demonstrates that each of the named appellants submitted completed PCQ’s which were signed and dated by them in either June or July 2002. On July 31, 2002, Assistant Commissioner MacInnes requested reclassification of 30

positions in the division in order to provide equitable and just compensation for personnel who have been carrying out the objectives of the division. These completed PCQ's were submitted along with Assistant Commissioner MacInnes' correspondence. On September 19, 2002, the Division of Human Resource Management conducted a group audit and reclassified incumbents in the Education Program Development Specialist 2 title to the Education Program Development Specialist 1 title with an effective date of September 21, 2002. The Division of Human Resource Management also indicated that Ms. Jaick advised them that she had previously submitted documentation for reclassification on September 5, 2001, but that a review of the file did not reveal any documentation that would support an earlier effective date.

The parties were invited to supplement the record in support of this appeal. The DOE responded and noted that it was in agreement with the July 27, 2002 appointment dates based on the findings of the reclassifications.<sup>1</sup> However, the DOE failed to provide any explanation as to why it did not take action in response to appellants' September 2001 requests.

The CWA states that PCQ's were forwarded to the appointing authority on or about September 5, 2001, but that none of the employees received a response regarding their July 27, 2002 appointments to the Education Program Development Specialist 1 title until October 15, 2002. Additionally, the appellants submit PCQ's that were signed and dated in August 2001. Under these circumstances, the appellants request an effective date of September 15, 2001.

## CONCLUSION

With respect to classification appeals submitted by an employee or union representative, *N.J.A.C.* 4A:3-3.9(c)1 states that the agency representative shall review the appeal within 10 days of receipt and either notify the appellant that specific additional information is required, or shall forward the appeal to the DOP and so notify the appellant. If additional information is required, the agency representative shall forward the appeal to the DOP within 10 days of receipt of the appellant's response to the request for additional information. *N.J.A.C.* 4A:3-3.9(c)2 provides that the DOP shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision within 60 days of receipt of the appeal and all requested information. Moreover, with regard to the effective date of reclassification, *N.J.A.C.* 4A:3-3.9(f) provides that the effective date of a position reclassification shall be the pay period immediately after 14 days from the date the DOP received the appeal or reclassification request, or at such earlier date as directed by the Commissioner. However, with regard to internal organizational timelines, this rule simply provides that a request for reclassification may be forwarded to the appointing authority if appellant's supervisor has not signed the request within five days of receipt. See *N.J.A.C.* 4A:3-3.9(c).

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<sup>1</sup> Although informed that they were appointed on September 21, 2002, a review of the appellants' personnel records demonstrate a permanent appointment to the Education Program Development Specialist 1 title on July 27, 2002. This inconsistency in the record is not explained.

In the present matter, the record indicates that although requests for reclassification may have been made as early as September 2001, due to internal processing delays, completed classification questionnaires were not received by the appointing authority and submitted to the DOP until July 31, 2002. Indeed, the PCQ's submitted in support of the reclassifications were all signed and dated by each of the appellants in either June or July 2002, yet, appellants provide on appeal PCQ's that were signed and dated in August 2001. Further, it appears from this record that Ms. Mitchell did acknowledge receipt in September 2001 of the PCQ's which were signed and dated in August 2001, but she also noted that she was not sure if she was the person to receive the forms and needed to find out the procedure for a reclassification action, and if other parties in the DOE should get copies of the PCQ's. Subsequently, it was determined that reclassification requests were to be forwarded to Ms. Nuccetelli, who advised appellants that the matter was still being reviewed in October 2001. Although appellants allege that the appointing authority denied their request in April 2002, neither party submitted any written documentation that the appointing authority did so on this date.

Rather, the record reflects that Assistant Commissioner MacInnes submitted the completed PCQ's to the DOP for review on July 31, 2002. Consistent with *N.J.A.C. 4A:3-3.9(c)2*, audits were performed on September 19, 2002 and appellants' titles were reclassified. Clearly, the issue in this case is what set of the two PCQ's should be the basis for appellants' effective dates of reclassification. In this regard, it is noted that the PCQ's dated in August 2001, upon which appellants rely, as a whole do not specify the "percentage of time" they spent performing duties, nor did supervisors note the "order of difficulty" of the noted duties in Section 8 of the PCQ. Rather, all of the appellants in this section state that the "duties performed are on-going responsibilities that occur concurrently and simultaneously throughout the year." Additionally, the duties are simply listed and not presented from the most important to the least important duties.<sup>2</sup> On the other hand, the PCQ's signed in June or July 2002 specify the percentage amount of time each of the appellants performs the noted duties and note the order of difficulty of these duties. These PCQ's are also "blocked" in groups of most important to least important duties. It is also noted that, for the most part, the duties specified on each of the PCQ's are the same.

The foundation of position classification, as practiced in New Jersey, is the determination of duties and responsibilities being performed at a given point in time as verified by the Department of Personnel, Division of Human Resource Management, audit or other formal study. Thus, classification reviews are based on a current review of assigned duties and any remedy derived there from is prospective in nature since duties which may have been performed in the past cannot be reviewed or verified. Given the

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<sup>2</sup> The instructions for Section 8 "Work (Duties) Performed" of the PCQ advises an applicant that "answers to this item require an exact account of what you do. Describe your "whole-job" or year-round duties, not just those which might be performed during rush or peak hours of activity or when you are substituting for other persons. Start with your most important duties and describe your least important duties. Use a separate paragraph for each major duty. In the column at the left indicate as best you can the percentage of time you devote to each duty. The position's supervisor will complete the information requested in the right hand column. "

evolving nature of duties and assignments, it is simply not possible to accurately review the duties an employee may have performed six months ago or a year ago or several years ago. The DOP's established classification review procedures in this regard have been affirmed following formal Merit System Board review and judicial challenges. *See In the Matter of Engineering Technician and Construction and Maintenance Technician Title Series, Department of Transportation*, Docket No. A-277-90T1 (App. Div. January 22, 1992); and *In the Matter of Theresa Cortina* (MSB, decided May 19, 1993).

In this matter, HRM specifically noted in December 2002 that even though Shop Steward Jaick asserted that she submitted documentation for reclassification in September 2001, the file did not contain any supporting documentation with regard to her claims. Furthermore, a review of the PCQ's submitted by the appellants dated August 2001 appear to be incomplete, as the appellants did not provide the percentage of time or the order of importance of the work duties they performed on this earlier submission. In this regard, as it is noted earlier, position classification is the determination of duties and responsibilities being performed at a given point in time as verified by the DOP via audit or formal study. It is axiomatic that in order to determine the level and scope of duties, the amount of time an individual performs said duties and the relative level of importance of the duties are required in order to make a reasoned determination.

Generally, internal departmental processing delays, such as organizational and staffing changes, and supervisory reviews, over which the DOP has no control, do not provide sufficient basis for a retroactive effective date of a position classification. *See In the Matter of Anthony Bruno, et al.* (Commissioner of Personnel, decided August 3, 2000). Nevertheless, in this matter, the DOE appointing authority, although invited to supplement the record, did not indicate any organizational changes or internal reviews that would toll the position classification process. Indeed, appellants provided internal documentation that the DOE acknowledged receipt of the PCQ's in September 2001 and was informed in October 2001 that the matter was still under review. It is also evident that the PCQ's provided by the appellants dated in August 2001 are essentially incomplete, as they do not specify the percentage amount of time or relative level of importance performing the noted work duties to accurately determine the level and scope of duties required of the position. Consistent with the controlling provision, the appointing authority could have requested additional information from the appellants. However, there is no indication in the record that it did at that time. Based on all of the above circumstances, relief is warranted in this situation.

As it is unclear on this record what specific internal delays occurred between September 5, 2001, when the DOE acknowledged receipt of the PCQ's, and July 31, 2002, when Assistant Commissioner MacInnes submitted a formal request to reclassify the positions, it is necessary to construct an effective date of implementation consistent with the above noted rules. Thus, the minimum amount of time that could have passed before the request was required to be submitted to the DOP was 20 days (September 25, 2001). Therefore, consistent with *N.J.A.C. 4A:3-3.9(f)*, appellants should receive an effective date consistent with the pay period immediately after 14 days from September 25, 2001, which is October 22, 2001.

**ORDER**

Therefore, it is ordered that this appeal be granted, and that the effective date of appellants' reclassification be changed to October 22, 2001.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.